

STATE OF MICHIGAN  
COURT OF APPEALS

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RANDALL GREGG MCWILLIAMS,

Petitioner-Appellee,

v

SECRETARY OF STATE,

Respondent-Appellant.

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UNPUBLISHED

October 28, 2004

No. 248364

Oakland Circuit Court

LC No. 2002-041824-AL

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Respondent appeals by leave granted the circuit court order reversing the decision of its Driver License Appeal Division (DLAD) hearing officer denying petitioner's petition for reinstatement of his driver's license. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner's driver's license was administratively revoked after he accumulated two alcohol-related driving offenses within seven years. MCL 257.303. At a hearing on his petition for reinstatement of his license, petitioner asserted that he no longer consumed alcohol, but that he consumed "an occasional O'Doul's" (a beer that contains a small amount of alcohol). In support of his petition, petitioner submitted a substance abuse evaluation, an Alcoholics Anonymous (AA) attendance sheet, and letters attesting to his sobriety. The hearing officer denied the petition, finding that petitioner failed to prove by clear and convincing evidence that he had abstained from the use of alcohol for at least twelve months, that his continued attendance at activities at which alcohol was prevalent constituted risky behavior in light of his history of relapse, and that his failure to obtain an AA sponsor indicated that his commitment to that program was questionable. The circuit court reversed the hearing officer's decision, concluding that it was arbitrary and capricious.

A circuit court's review of an administrative decision is limited to determining whether the decision was contrary to law, was supported by competent, material, and substantial evidence on the whole record, was arbitrary or capricious, or was otherwise affected by a substantial and material error of law. Const 1963, art 6, § 28; MCL 24.306; *Boyd v Civil Service Comm*, 220 Mich App 226, 232; 559 NW2d 342 (1996). A reviewing court should accord due deference to administrative expertise, and should not invade administrative fact finding by displacing an agency's choice between two reasonably differing views. *Dignan v Michigan Pub Schools Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002).

We review a lower court's review of an agency decision to determine whether the lower court applied correct legal principles, and whether it misapprehended or grossly misapplied the substantial evidence test to the factual findings made by the agency. *Id.* at 575. This standard is the same as the clearly erroneous standard of review. *Id.* at 575-576. A finding is clearly erroneous when, after a review of the whole record, we are left with the firm and definite conviction that a mistake was made. *Id.* at 576.

A circuit court may set aside the decision of the DLAD if the petitioner's substantial rights have been prejudiced because the decision is not supported by competent, material, and substantial evidence on the whole record, or is arbitrary and capricious. MCL 257.323(4)(d) and (e). A hearing officer's decision should be affirmed if it is supported by the requisite evidence, even if the reviewing court concludes that it would have reached a different decision. *Kester v Secretary of State*, 152 Mich App 329, 335; 393 NW2d 623 (1986).

The DLAD may not issue a license to a petitioner whose license has been revoked due to an accumulation of alcohol-related convictions unless the petitioner establishes by clear and convincing evidence that his alcohol problem is under control and is likely to remain under control, and that he is at low or minimal risk of repeating his past abusive behavior. 1999 AC, R 257.313(1)(a)(i) and (ii). The petitioner must show by clear and convincing evidence that he has completely abstained from the use of alcohol for at least twelve months if the evidence shows that he suffered a relapse while attempting to bring his problem under control, or if a substance abuse evaluation concludes that the petitioner has a diagnosis of alcohol abuse or dependency. 1999 AC, R 257.313(1)(b)(iii) and (iv). Complete abstinence is defined as refraining completely from the consumption of any alcohol, including nonalcoholic beer. 1999 AC, R 257.301(a).

Petitioner admitted to consuming O'Doul's beer; however, his testimony as to how often or when he consumed that beverage was vague and contradictory. The AA attendance sheet submitted by petitioner did not contain his name; therefore, his attendance at meetings could not be verified. The substance abuse evaluation prepared by petitioner's counselor stated that petitioner's alcoholism was in remission, but that his relapse history was not known. This statement called into question the credibility of petitioner's assertion that he discussed his relapse history with his counselor. Further, as the hearing officer noted, petitioner's failure to have an AA sponsor and continued attendance at activities where alcohol is prevalent calls his commitment to abstinence into question.

Given this record, the hearing officer's conclusion that petitioner failed to prove by clear and convincing evidence that he completely abstained from alcohol for the requisite period was not arbitrary or capricious. The hearing officer's decision to deny petitioner's petition for reinstatement of his license was not arbitrary or capricious. MCL 257.323(4)(e); 1999 AC, R 257.313(1)(a)(i) and (ii). The circuit court improperly substituted its judgment for that of the hearing officer, *Kester*, *supra*, and misapprehended and misapplied the substantial evidence test. *Dignan*, *supra*.

We reverse.

/s/ William C. Whitbeck  
/s/ Kathleen Jansen  
/s/ Richard A. Bandstra